

COVINGTON & BURLING LLP

1201 PENNSYLVANIA AVENUE NW
WASHINGTON, DC 20004-2401
TEL 202.662.6000
FAX 202.662.6291
WWW.COV.COM

BEIJING
BRUSSELS
LONDON
NEW YORK
SAN DIEGO
SAN FRANCISCO
SILICON VALLEY
WASHINGTON

GERARD J. WALDRON
TEL 202.662.5360
GWALDRON@COV.COM

August 4, 2014

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *MB Docket No. 12-3 -- Ex parte meeting*

On July 31, 2014, Ken Edmonds with the National Football League ("NFL") and the undersigned, its counsel, along with Joe Briggs, in-house counsel to the National Football League Players Association ("NFLPA") and Richard Metzger of Lawler, Metzger, Keeney & Logan, outside counsel to the NFLPA, met with Maria Kirby, Legal Advisor to Chairman Wheeler, to emphasize that the FCC's sports blackout rule remains necessary and in the public interest because it is a key component of the commercial and regulatory system that has enabled the NFL to keep its games available on broadcast television.

NFL representatives began by explaining the League's stadium policy, which serves to balance the League's two objectives of maximizing the in-stadium experience and engaging our fans through various media platforms. They stated that the policy has been adjusted over the years and that the League works with clubs to make blackouts exceedingly rare by giving teams the ability to lower the threshold that determines a sellout. They noted that the number of blackouts has dropped dramatically and attendance and viewership have increased over the past few decades. Although the League has taken a variety of steps to accomplish that goal, the blackout rule has been a critical contributing factor to that success.

They then explained that the League's stadium policy benefits the fans, because, in concert with the FCC's sports blackout rule and other elements of the current system, the policy helps to keep NFL games on free broadcast television. Professional football is the only sport for which fans have access to all of the sold-out games of their home team without having to pay an expensive monthly fee for cable or satellite service. NFL representatives said that the current system clearly serves the public interest by making professional football games available to the estimated 60 million Americans who rely on free TV for their access to broadcast programming. They emphasized that, if the current system were changed and NFL games were to move to pay-TV, fans who wanted to watch their home team would have to pay a \$60-80 fee per month, and a significant number of fans likely would not be able to afford that premium. That result would represent a substantial loss of consumer welfare.

COVINGTON & BURLING LLP

Ms. Marlene Dortch
August 4, 2014

NFL representatives then discussed the findings of Dr. Hal Singer, who submitted a declaration in the docket and also made a presentation earlier this month to the Bureau staff, which we shared with Ms. Kirby. We summarized Dr. Singer's key findings:

- The sports blackout rule supports the NFL's ability to maintain its "free TV model."
- The Sports Fan Coalition and its supporters are simply wrong to suggest that the economics of "gate revenue" and the television package would dissuade the NFL from moving its games to pay-TV. The literature actually supports the opposite conclusion.
- Contrary to the assertion by the Sports Fan Coalition and its supporters, the NFL's blackout policy lifts attendance and tempers clubs' incentive to raise ticket prices.
- For these reasons, from an economic perspective, the net benefits of the sports blackout rule and the NFL's private blackout policy are positive.

The NFLPA representatives stated that players have become involved in this issue because the current system fosters a great stadium experience for the fans and the players (who also receive a portion of the stadium revenues), and helps to ensure that all games, both regular season and playoff, are offered on free, over-the-air television. They emphasized that the current system is working for the fans and that it makes no sense to change the rules that have produced a successful result over many years. Stadium workers, concession workers, parking attendants, hotel employees and, more generally, the local economies also benefit from a full stadium, which is why Mayor Gregory Ballard, the Mayor of Indianapolis and Chair of the Mayors' Professional Sports Alliance, submitted a letter in support of the rule.

The discussion then turned to whether the rule is "obsolete" in light of claims that the market can address this issue. NFL representatives pointed to the uncontroverted evidence in the record, including the affidavit by Brian Rolapp, Chief Operating Officer of NFL Media, showing that the League cannot control the distribution of its games and maintain its stadium policy through private contract. We explained that the League has no privity of contract with local affiliates, so it has no ability to control whether an affiliate allows importation of its signal to a distant market. In response to a question, we stressed that the rule is not a substitute for contract negotiations with the networks, since even if the networks had an incentive to negotiate, they could not be bound in contract to ensure blackouts unless they first locked down a provision in each of their two hundred or so affiliation agreements to effectuate that goal, but those contracts have staggered terms and a variety of provisions. NFL representatives challenged the notion that the Commission could or should take steps to alter the term of those agreements and emphasized that these real and specific obstacles to contracting cannot be simply assumed away.

In sum, the NFL and NFLPA representatives concluded that, because the availability of NFL games on free TV is plainly in the public interest, the Commission should not repeal the sports blackout rule because it continues to play an important role in the sports and broadcast television system.

COVINGTON & BURLING LLP

Ms. Marlene Dortch

August 4, 2014

Please direct any questions to the undersigned.

Sincerely,

/s/

Gerard J. Waldron

Counsel to National Football League

cc: Ms. Maria Kirby

Attachments

SWANN, INC.

506 Hegner Way
Sewickley, PA 15143
412-749-4988 FAX 412-749-8245
Email: lcs@swanninc.com

July 28, 2014

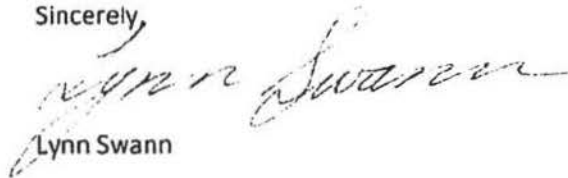
The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Docket No. 12-3

Dear Chairman Wheeler:

Please find attached more than 6,700 letters from football fans across the country urging the Commission to maintain its sports blackout rule, which helps to keep NFL games on free TV. These letters have been sent via e-mail to you and your colleagues on the Commission. I have attached these fan letters herein to ensure that they are properly filed and duly considered as part of the record.

Sincerely,



Lynn Swann

Cc: Ms. Marlene Dortch, Secretary, Federal Communications Commission

UNITEHERE!

OFFICE OF THE PRESIDENT

1630 South Commerce Street, Las Vegas, NV 89102 • TEL (702) 386-5120 • FAX (702) 386-5290
WWW.UNITEHERE.ORG • facebook.com/UNITEHERE • @UNITEHERE

July 22, 2014

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Docket No. 12-3

Dear Chairman Wheeler:

On behalf of UNITE HERE, I write to express opposition to the Commission's proposal to eliminate its Sports Blackout Rule. UNITE HERE is a labor union that represents hundreds of thousands of working people in the hotel, food service, transportation and other service industries across North America.

We stand in solidarity with our brothers in the National Football League Players Association, who strongly support maintaining this long-standing rule. The talented and dedicated players of the NFL directly benefit from the rule, as do sports fans, local communities and the public, including members of this union.

The current broadcast rules facilitate and support policies that promote robust attendance at professional football games. These policies result in sold-out games and capacity crowds, which not only add to the excitement and drama for those inside an NFL stadium, but also reward NFL players since a percentage of stadium revenue goes to players' salaries.

The policies leading to full stadiums also generate economic activity, helping to support thousands of jobs and businesses in communities throughout the country. Many workers -- including our union members -- depend on the wages generated by fans attending sold-out games and other stadium events for income to support their families. These workers include custodial staff, parking attendants, concessionary clerks, hotel and restaurant workers and others in the hospitality industry. They all benefit when hundreds of thousands of fans come together to watch and support their favorite teams on game day.

D. TAYLOR, PRESIDENT

GENERAL OFFICERS: Sherri Chiesa, Secretary-Treasurer • Peter Ward, Recording Secretary
Tho Thi Do, General Vice President for Immigration, Civil Rights and Diversity

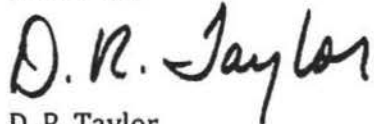


The Honorable Thomas Wheeler
July 22, 2014
Page Two

Our members also benefit when NFL games sell out and are shown on free, over-the-air television. Many working people throughout the country cannot easily afford cable or satellite television, particularly during this time of rising costs, falling earnings and economic uncertainty. In fact, a growing number of Americans rely exclusively on free TV for their news and entertainment, such as NFL games. This includes our hardworking members, who want to ensure that NFL football remains on free TV.

For these reasons, UNITE HERE respectfully requests that the Commission keep the current broadcast rules in place. The rules promote full stadiums, which provide job and employment opportunities for the working people that we are proud to represent. The rules also promote free television, an important resource on which many workers rely.

Sincerely,

A handwritten signature in black ink that reads "D. R. Taylor". The signature is written in a cursive, flowing style.

D. R. Taylor
President of UNITE HERE

cc: Ms. Marlene Dortch, Secretary, Federal Communications Commission



July 11, 2014

The Honorable Thomas Wheeler
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dear Chairman Wheeler:

I write regarding the Commission's current rulemaking proposal to repeal the Sports Blackout Rule. I believe the NFL's stadium policies and the Commission's current broadcast rules work cooperatively to serve the interests of cities as well as the public by promoting live game attendance and the broadcast of professional football on free, over-the-air television.

Since 1992, public funds have helped to build or modernize twenty-nine of the NFL's thirty-two clubs' stadiums throughout the country. The stadiums, arenas and entertainment complexes are important sources of economic activity and civic pride. These public-private financing projects in turn have helped to create jobs and generate tax revenue for local communities. Third-party studies typically estimate that the annual economic impact of an NFL team, including its home stadium, exceeds \$100 million.

I have a civic and fiduciary responsibility to manage and maximize taxpayers' return on our stadium investments. I am a stakeholder in the NFL's policies and initiatives to promote game attendance and the in-stadium experience. My community benefits when thousands of fans attend games and our stadiums become the hub of community and business activity. Packed football stadiums create a community experience like no other event. Importantly, they also provide income for thousands of hospitality workers who benefit from a full stadium.

My constituents also benefit when NFL games are sold out and shown on free, over-the-air (OTA) broadcast television. A growing number of citizens, many of whom are low-income and minorities, depend exclusively on free TV for their news and entertainment, including NFL games. These fans are able to watch their local NFL team's games on free TV virtually all of the time.

The NFL is the only sports league that makes all games, both regular season and playoffs, available on free television. That's a big win for all fans, especially those who are on a fixed

Phone: 317.327.3601
Fax: 317.327.3980
TDD: 317.327.5186

Office of the Mayor
2501 City County Building
200 E. Washington Street
Indianapolis, Indiana 46204
www.indy.gov

July 11, 2014
Sports Blackout Rule
Page 2 of 2

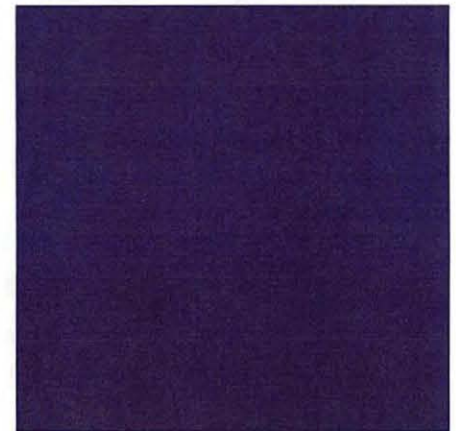
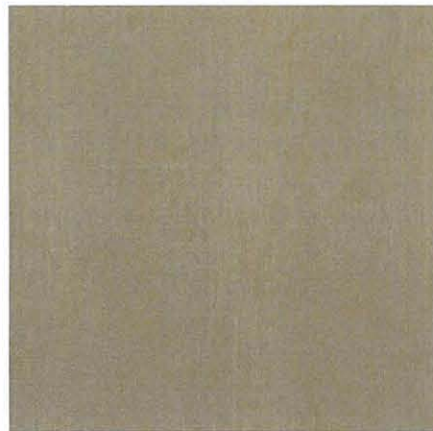
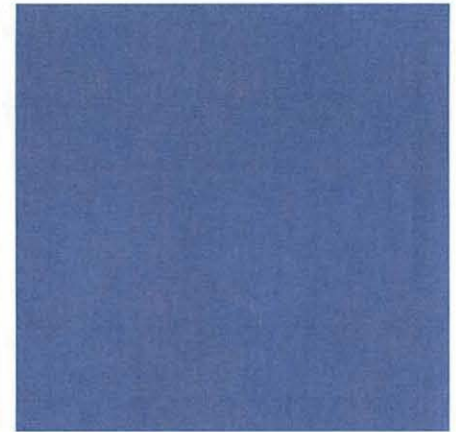
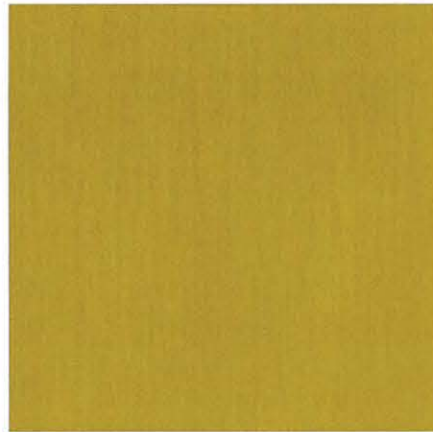
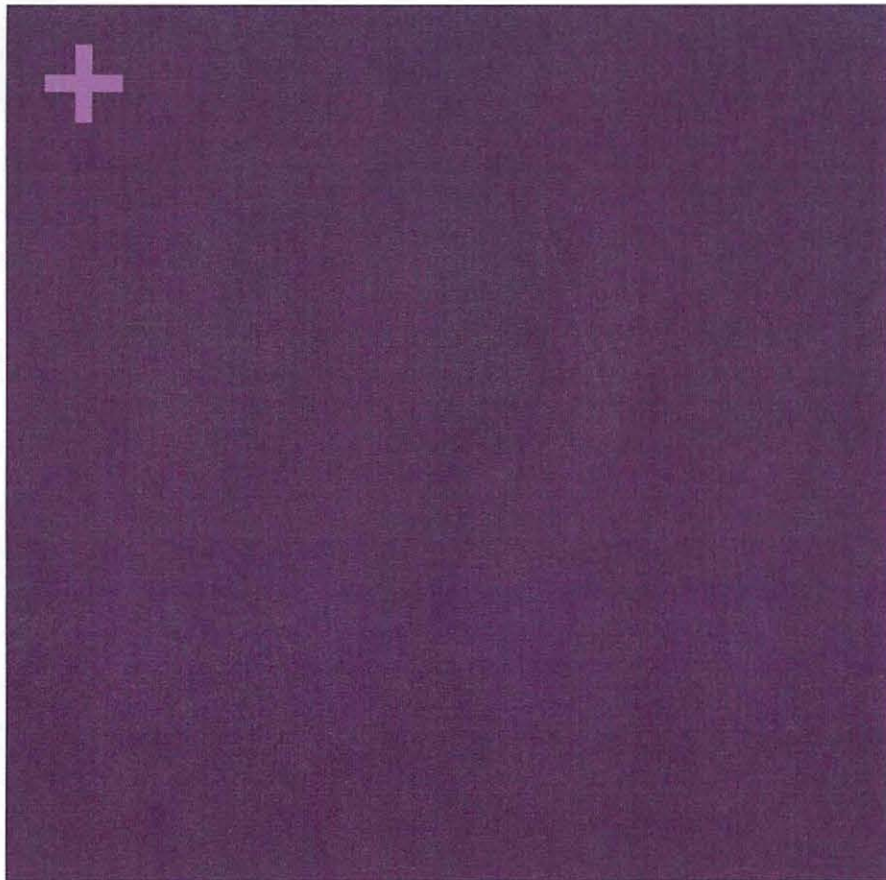
income and cannot afford to pay for a subscription service. However, eliminating the Sports Blackout Rule puts the local broadcast model at risk and may cause sports leagues to move sports programming from free, OTA broadcast to pay television. Such a change would be detrimental to many in our communities.

I urge you to maintain the current broadcast rules that work for the NFL, our local communities, and football fans throughout the country. Eliminating these rules would upset a careful balance of interests, potentially depriving OTA-reliant viewers of programming and curbing returns on public-sector investments.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg A. Ballard". The signature is fluid and cursive, with the first name "Greg" and last name "Ballard" clearly distinguishable.

Gregory A. Ballard
Mayor
City of Indianapolis
Chair, Mayors' Professional Sports Alliance



Analysis of the FCC's Sports Blackout Rules (SBR)

Hal J. Singer

Economists Incorporated

+ Net Benefits of SBR and NFL's Private Blackout Policy Are Positive

■ Benefits

- Private: Lifts attendance; lifts viewership and advertising revenues; reduces contracting costs (SBR)
- Social: Tempers ticket prices; sustains “free TV” model, which spares potentially 20% of video homes from having to buy cable subscription (SBR)

■ Costs

- Social: Consumer harm associated with missing a few blacked out games
- Status quo should be preserved so long as benefits exceed the costs

+ FCC's SBR and the NFL's Private Blackout Policy

- NFL private blackout policy prohibits broadcaster from televising a game in the home team's local television market if that game does not sell out 72 hours before game time
 - Modified to allow teams that sell 85 percent of available stadium capacity to qualify as a sell out with sufficient notice
- Without the SBR, MVPDs could circumvent NFL's private blackout policy by importing distant signals carrying blacked-out games; SBR solves an otherwise complex contracting problem
- Takeaway: NFL's private blackout policy would persist in the absence of the SBR to the extent it was still profitable

+ SBR Supports NFL's Ability to Maintain Its "Free TV" Model

■ Singer Evidence

- Reduces contracting costs; obviates need to contract with RSNs to avoid compulsory license
- Importance of SBR to sustaining "Free TV" model: Filings of the NFL, MLB, NAB, 2005 FCC testimony to Congress
- Lack of **exclusivity** for local broadcasters would reduce the value of NFL telecasts to advertisers, which in turn reduces value that broadcasters would pay for NFL rights
 - NAB Comments: "If the Commission were to curtail broadcasters ability to enforce that exclusivity, it would weaken broadcasters capacity to attract advertising, thereby reducing their ability to pay for popular programming generally and to invest in local programming specifically." (at 7)
- Up to 20% of homes rely on OTA broadcasting in 2013

■ Sports Economists' 2012 Report

- Claim that because blackouts allegedly do not affect attendance or in-stadium revenues, NFL would have no incentive to switch to pay-TV (at 17)
- Further claim that if the NFL were to migrate away from a major network (such as FOX or ABC), that network would be in a position to sponsor and televise an entirely new (currently non-existent) football league (at 17-18)

■ Sports Economists' 2014 Report

- By assuming the value of exclusivity can be restored through contracting, they offer a misleading depiction of NFL's calculus: "It must also be that contracting costs [in absence of SBR] would be large enough to outweigh the benefits created for the NFL by its OTA broadcasts [vis-à-vis a Pay TV model]." (at 8)

+ NFL's Calculus for Switching from "Free-TV Model"

- Let OTA' indicate a world without SBR and OTA indicate a world with SBR
 - Assume that no amount of contracting under OTA' can restore full value of exclusivity
 - Brian Rolapp Decl. para. 5
- NFL would switch to pay TV without SBR if (1)
 - $\text{Value TV (pay TV)} + \text{Value Gate (pay TV)} > \text{Value TV (OTA')} + \text{Value Gate (OTA')}$
- We also know that (2)
 - $\text{Value Gate (pay TV)} = \text{Value Gate (OTA)} > \text{Value Gate (OTA')}$ by Putsis & Sen
- Using (2) allows us to simplify condition (1)—namely, NFL would switch to pay TV if (3)
 - $\text{Value TV (pay TV)} + \text{Increase in Gate Revenue} > \text{Value TV (OTA')}$
 - Which is true so long as lost value of exclusivity (as move from OTA to OTA') exceeds loss in viewers (as move from OTA to pay TV)
 - Loss in viewers is mitigated to extent that some OTA homes would subscribe to pay TV to follow NFL

+ NFL's Blackout Policy Lifts Attendance

■ Singer Evidence

- Putsis & Sen (2000) (estimating an increase in gameday ticket sales of 11k and a decrease in no shows by 5k)
- Banks and large corporations buying large blocks of tickets to avoid blackouts
- NFL executives noting that spurring attendance was a primary reason for the existence of the policy
- Sports Economists' reference to clubs' use of "strategic marketing tools"

■ Sports Economists' 2012 Report

- Claim no "significant effect" on ticket sales (at 13-14)
- Alternatively, claim that in-stadium revenues are too small to matter in comparison to television revenues (at 13)
 - *But see Singer* (showing in-stadium revenues account for one quarter of total revenues)

■ Sports Economists' 2014 Report

- SBR "forces a few hundred people to attend a game . . ." (at 2)
- Statistically significant but not economically significant (at 3)
- Claim that *incremental* stadium revenues attributable to NFL's blackout policy are too small to matter (at 7)

+ NFL's Blackout Policy Tempers Clubs' Incentive to Raise Ticket Prices

■ Singer Evidence

- Clubs leaving money on the table by pricing at inelastic portion of demand
 - Winfree (2008); Putsis & Sen (2000)
- Private blackout policy puts local television advertising revenue at risk in the event that a game does not sell out
 - Absent the NFL's private blackout policy, prices would likely be higher
- Greater attendance makes telecasts more appealing, which supports even greater advertising revenue
 - DeSerpa & Faith (1996); Dietl & Dusch (2009)

■ Sports Economists' 2012 Report

- Implied absent the NFL's private blackout policy, ticket prices would be lower (at 13-14)

■ Sports Economists' 2014 Report

- Reduced ticket prices are a "market alternative" to the SBR (at 3, 9)

+ NFL's Private Blackout Policy Generates Negligible Output Effects

- The constraint rarely binds and does so with decreasing frequency
 - In 1996, 78 (of 240) games were blacked out
 - In 2011, 16 (of 256) games were blacked out
 - In 2012, 15 (of 256) games were blacked out
- That there are few blackouts implies that the policy is working (by stimulating demand), not that the policy is unnecessary